

AL-15-000-7242

**United States Senate**  
WASHINGTON, DC 20510

April 1, 2015

The Honorable Gina McCarthy  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dear Madam Administrator:

During the March 4, 2015, Committee on Environment and Public Works hearing on the Environmental Protection Agency's (EPA) Fiscal Year 2016 budget, several important questions regarding current climate science and data were raised. Although questions regarding the impacts of climate change were clear and straightforward, none of the questions received direct answers, and many responses contained caveats and conditions.

We write today to emphasize that these questions were not posed lightly or in passing. In fact, questions related to whether projected climate impacts are actually occurring are critical to verifying EPA's commitment to the best science and data, especially as the agency proposes costly carbon dioxide emissions reductions throughout the United States. Stated differently, given that the Administration's proposal to fundamentally change the nature of domestic electricity generation is based on the apparent need to avoid "devastating" climate impacts to the United States and the planet, it is imperative that the agency be candid and forthright in assessing the reality of this projection.

EPA must demonstrate its commitment to sound science and data by providing prompt and thorough responses to questions from Congress. Accordingly, we request and look forward to detailed answers to the following questions:

**Drought**

- 1) In its 2013 Fifth Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) concluded the following:

[T]here is not enough evidence at present to suggest more than low confidence in a global-scale observed trend in drought or dryness (lack of rainfall) since the middle of the 20th century, owing to lack of direct observations, geographical inconsistencies in the trends, and dependencies of inferred trends on the index choice. Based on updated studies, AR4 conclusions regarding global increasing trends in drought since the 1970s were probably overstated. However, it is likely that the frequency and intensity of drought has increased in the Mediterranean and West Africa and decreased in central North America and north-west Australia since 1950.

Do you agree or disagree with the IPCC's conclusion? Please provide all data, analyses, and other evidence that you reviewed and relied on to reach your conclusion.

- 2) In its Special Report on Extreme Events (*Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*), the IPCC concluded the following:

There is medium confidence that since the 1950s some regions of the world have experienced a trend to more intense and longer droughts, in particular in southern Europe and West Africa, but in some regions droughts have become less frequent, less intense, or shorter, for example, in central North America and northwestern Australia.

Similarly, the U.S. Climate Change Science Program's 2008 report (*Weather and Climate Extremes in a Changing Climate*) concluded:

[D]roughts have, for the most part, become shorter, less frequent, and cover a smaller portion of the U. S. over the last century.

Do you agree or disagree with these two conclusions? Please provide all data, analyses, and other evidence that you reviewed and relied on to reach your conclusion.

- 3) At the March 2015 budget hearing, Senator Sessions asked for "the worldwide data about whether or not we are having fewer or less droughts." You responded, "I am happy to provide it but I certainly am aware that droughts are becoming more extreme and frequent."

- a. Please provide all data, analyses, and other evidence held or used by EPA regarding worldwide drought frequency.
- b. Please provide all data, analyses, and other evidence which warranted your conclusion that "droughts are becoming more extreme and frequent."

### Hurricanes/cyclones

- 1) The IPCC Fifth Assessment Report concluded the following:

Current data sets indicate no significant observed trends in global tropical cyclone frequency over the past century. . . . No robust trends in annual numbers of tropical storms, hurricanes and major hurricanes counts have been identified over the past 100 years in the North Atlantic basin.

Do you agree or disagree with the IPCC assessments regarding data sets on global tropical cyclone frequency and trends in annual tropical storms, hurricanes, and major hurricanes in the North Atlantic basin?

- 2) Does EPA have any data, analyses, or other evidence demonstrating an increase in global tropical cyclone (hurricane) frequency over the past century? If so, please provide such data, analyses, or evidence.
- 3) Does EPA have any data, analyses, or other evidence demonstrating an increase in the annual number of tropical storms, hurricanes and major hurricanes over the past 100 years in the North Atlantic basin? If so, please provide such data, analyses, or evidence.
- 4) At the March 2015 budget hearing, Senator Sessions asked whether there have been more or less hurricanes in the last decade. You responded that "[t]here have been more frequent hurricanes and more intense." Please provide all data, analyses, and other evidence which warranted your response.
- 5) Do you agree or disagree that it has been nearly ten years since the last major hurricane struck the United States?

### Temperature data

- 1) Dating back to the 1970's, IPCC climate models have historically predicted a significant increase in global temperatures. At the March 2015 budget hearing, Senator Sessions asked "[i]f you take the average of the models predicting how fast the temperature would increase, is the temperature in fact increasing less than that or more than that?"

You replied that you could not "answer that question specifically," but later committed to submitting written information explaining whether you believe the models have been proven correct and whether temperatures have increased less than projected or more than projected.

Please provide data and analyses showing actual global average temperatures since 1979 versus IPCC predictions, including an EPA-produced chart comparing actual global average temperature increases since 1979 (when satellite temperature data became available) versus the latest IPCC predictions. Please also provide your conclusion on whether IPCC climate models have proven correct.

- 2) At the March 2015 budget hearing, you stated "[t]here are many models and sometimes it is actually going faster and sometimes slightly slower than the model predicts, but on the whole, *it makes no difference* to the validity and the robustness of climate science that is telling us that we are facing an absolute challenge that we must address both environmentally and economically from a national security perspective, and for EPA, from a public health perspective."

Do you agree that EPA has a duty to review and verify the accuracy of climate projections which have served as the basis for the agency's regulatory policy and agenda?

### Climate impact monitoring

- 1) According to EPA's website, the agency's Office of Environmental Information "manages the life cycle of information to support EPA's mission of protecting human health and the environment" and "ensure[s] the quality of EPA's information."

The Office's Quality Management Program develops "Agency-wide policies, procedures and tools for quality-related activities relating to the collection and use of environmental information."

In addition, EPA's Office of Information Collection "works in collaboration with EPA partners and customers to develop and implement innovative policies, standards and services that ensure that environmental information is efficiently and accurately collected and managed."

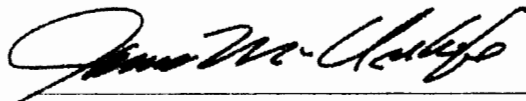
What policies do these and other offices at EPA have in place to monitor and verify the accuracy of agency climate projections? Please provide all reports, analyses, memoranda, and other information from the past ten years in which EPA has reviewed the accuracy of its climate projections.

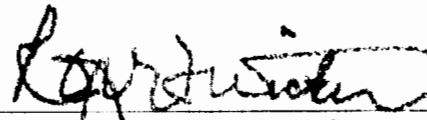
- 2) What portion of EPA's budget request for FY 2016 is dedicated to monitoring and verifying the accuracy of the agency's climate projections?

Please provide your responses no later than April 21, 2015.

Very truly yours,

  
\_\_\_\_\_  
Senator Jeff Sessions

  
\_\_\_\_\_  
Senator James M. Inhofe

  
\_\_\_\_\_  
Senator Roger Wicker

  
\_\_\_\_\_  
Senator John Barrasso



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 22

OFFICE OF  
AIR AND RADIATION

The Honorable John Barrasso  
United States Senate  
Washington, DC 20510

Dear Senator Barrasso:

Thank you for your April 1, 2015, letter to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding climate science and data. The Administrator asked that I respond on her behalf.

The EPA is committed to using sound science and data as the foundation for protecting human health and the environment. For climate change, we rely primarily on the scientific assessments of the U.S. Global Change Research Program (USGCRP), the United Nations Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC) of the National Academies. These assessments synthesize and assess research across the entire body of scientific literature, including consideration of uncertainty, in their development of key scientific findings. Enclosed are more specific responses to the issues raised in your letter.

Thank you again for your letter. If you have questions or concerns, please contact me or have your staff contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at [haman.patricia@epa.gov](mailto:haman.patricia@epa.gov) or (202) 564-2806.

Sincerely,

Janet G. McCabe  
Acting Assistant Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 22 2015

OFFICE OF  
AIR AND RADIATION

The Honorable James M. Inhofe  
United States Senate  
Washington, DC 20510

Dear Senator Inhofe:

Thank you for your April 1, 2015, letter to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding climate science and data. The Administrator asked that I respond on her behalf.

The EPA is committed to using sound science and data as the foundation for protecting human health and the environment. For climate change, we rely primarily on the scientific assessments of the U.S. Global Change Research Program (USGCRP), the United Nations Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC) of the National Academies. These assessments synthesize and assess research across the entire body of scientific literature, including consideration of uncertainty, in their development of key scientific findings. Enclosed are more specific responses to the issues raised in your letter.

Thank you again for your letter. If you have questions or concerns, please contact me or have your staff contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at [haman.patricia@epa.gov](mailto:haman.patricia@epa.gov) or (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "J. G. McCabe", is written over a horizontal line.

Janet G. McCabe  
Acting Assistant Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 22 2015

OFFICE OF  
AIR AND RADIATION

The Honorable Jeff Sessions  
United States Senate  
Washington, DC 20510

Dear Senator Sessions:

Thank you for your April 1, 2015, letter to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding climate science and data. The Administrator asked that I respond on her behalf.

The EPA is committed to using sound science and data as the foundation for protecting human health and the environment. For climate change, we rely primarily on the scientific assessments of the U.S. Global Change Research Program (USGCRP), the United Nations Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC) of the National Academies. These assessments synthesize and assess research across the entire body of scientific literature, including consideration of uncertainty, in their development of key scientific findings. Enclosed are more specific responses to the issues raised in your letter.

Thank you again for your letter. If you have questions or concerns, please contact me or have your staff contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at [haman.patricia@epa.gov](mailto:haman.patricia@epa.gov) or (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "J. McCabe", is written over a horizontal line.

Janet G. McCabe  
Acting Assistant Administrator

Enclosure





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 22 2015

OFFICE OF  
AIR AND RADIATION

The Honorable Roger Wicker  
United States Senate  
Washington, DC 20510

Dear Senator Wicker:

Thank you for your April 1, 2015, letter to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding climate science and data. The Administrator asked that I respond on her behalf.

The EPA is committed to using sound science and data as the foundation for protecting human health and the environment. For climate change, we rely primarily on the scientific assessments of the U.S. Global Change Research Program (USGCRP), the United Nations Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC) of the National Academies. These assessments synthesize and assess research across the entire body of scientific literature, including consideration of uncertainty, in their development of key scientific findings. Enclosed are more specific responses to the issues raised in your letter.

Thank you again for your letter. If you have questions or concerns, please contact me or have your staff contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at [haman.patricia@epa.gov](mailto:haman.patricia@epa.gov) or (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet G. McCabe", is located below the word "Sincerely,".

Janet G. McCabe  
Acting Assistant Administrator

Enclosure

## Enclosure: Response to April 1, 2015, letter from Senators Sessions, Inhofe, Wicker, and Barrasso

Below we present some scientific findings from the assessment literature addressing the four topics raised in the incoming letter, namely drought, hurricanes/cyclones, temperature data, and climate impact monitoring.

### Drought

With regard to climate change and drought, the assessment literature is clear that drought is a regional phenomenon and influenced by climate change. While changing patterns of precipitation (both spatial and temporal) are an expected consequence of anthropogenic global climate change, considering only global or even national metrics obscures important local trends. According to the 2014 National Climate Assessment (NCA)<sup>1</sup>, regions closer to the poles will see more precipitation, while the dry subtropics are expected to expand. This has been summarized as wet areas are getting wetter and dry areas are getting drier. In particular, the NCA notes that the western United States, and especially the Southwest, is expected to become drier. The 2013 Intergovernmental Panel on Climate Change Fifth Assessment Report (IPCC AR5)<sup>2</sup> similarly determined that future decreases in soil moisture and increases in the risk of drought are likely in presently dry regions, highlighting the Southwest USA as one of the regions with the most prominent likely soil drying. These projections are consistent with the recent observed drought trend in the West. At the time of publication, even before the last two years of extreme drought in California, the NCA stated that tree ring data were already indicating that the region might be experiencing its driest period in 800 years. The U.S. Climate Change Science Program's 2008 report (*Weather and Climate Extremes in a Changing Climate*)<sup>3</sup> referenced in the letter also highlighted the link between rising temperatures and increasing drought trends in the Southwest and parts of the interior West. Another assessment referenced in the letter, the 2011 IPCC Special Report on *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* (SREX)<sup>4</sup>, concludes that there is "medium confidence that droughts will intensify in the 21st century in some seasons and areas, due to reduced precipitation and/or increased evapotranspiration. This applies to regions including southern Europe and the Mediterranean region, central Europe, central North America, Central America and Mexico, northeast Brazil, and southern Africa."

---

<sup>1</sup> Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: *Climate Change Impacts in the United States: The Third National Climate Assessment*. U.S. Global Change Research Program, 841 pp. doi:10.7930/J0Z31WJ2.

<sup>2</sup> IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 1535 pp.

<sup>3</sup> CCSP, 2008: *Weather and Climate Extremes in a Changing Climate. Regions of Focus: North America, Hawaii, Caribbean, and U.S. Pacific Islands*. A Report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research. [Thomas R. Karl, Gerald A. Meehl, Christopher D. Miller, Susan J. Hassol, Anne M. Waple, and William L. Murray (eds.)]. Department of Commerce, NOAA's National Climatic Data Center, Washington, D.C., USA, 164 pp.

<sup>4</sup> IPCC, 2012: *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*. A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change [Field, C.B., V. Barros, T.F. Stocker, D. Qin, D.J. Dokken, K.L. Ebi, M.D. Mastrandrea, K.J. Mach, G.-K. Plattner, S.K. Allen, M. Tignor, and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, UK, and New York, NY, USA, 582 pp.

## Hurricanes/Cyclones

Anthropogenic climate change is also expected to contribute to a number of changes in extreme weather events. For example, there is an increasing trend for heavy downpours in many parts of the United States. According to the SREX assessment, tropical cyclone *intensity* is also expected to increase in the future, but the *frequency* of cyclones is likely to either decrease or remain unchanged. In addition to an increase in the intensity of the biggest storms, the SREX assessment found that heavy rainfall associated with tropical cyclones is likely to increase with warming. Sea level rise also will magnify the damages from storm surge. The number of landfalling major hurricanes is generally small and it is difficult to draw conclusions from the number of landfalls in a short period of recent years. Hurricane landfall is difficult to predict, but, when they do hit, the climate-change related impacts resulting from heavier precipitation and increased storm surge magnified by sea level rise are expected to increase the severity of damages. Additionally, a storm's status at landfall may not necessarily equate to the scope of the damage: while Sandy did not make landfall as a hurricane in 2012, it was one of the most damaging storms in U.S. history. Finally, the IPCC AR5 also stated that "it is virtually certain that the frequency and intensity of the strongest tropical cyclones in the North Atlantic has increased since the 1970s."

## Temperature Data

Warming of the climate system is unequivocal and, since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and oceans have warmed, the amounts of snow and ice have diminished, sea level has risen, and the concentrations of greenhouse gases have increased. Thirteen out of the 14 warmest years in the global surface temperature record have occurred this century, with 2014 the warmest year overall. 2015 has continued this trend: March 2015 was the warmest March on record globally and the first four months of 2015 were the warmest January-April period on record. Climate models are consistent with these long-term trends. Over shorter time periods, natural variability in the form of volcanic eruptions, solar variability, and fluctuations in oceanic heat exchange can temporarily mask the long-term trends caused by greenhouse gases. The IPCC AR5, the NCA, and the National Research Council (NRC)<sup>5</sup> have all found that differences between the model average rate of warming and the observed rate of warming are explained by these factors. In addition to the temperature record, a number of other climate metrics demonstrate the continuation of this long-term trend in increasing warming. For example, according to the IPCC, the observed rate of sea level rise over the past 20 years from satellites and tide gauges is at the high end of model projections, in part due to a higher rate of melt from the Greenland and Antarctic ice sheets than had been expected. Even after taking ice sheet melt into account, the high rate of sea level rise is evidence that the oceans are warming as projected by the climate models.

## Climate Impact Monitoring

Finally, regarding climate impact monitoring, as previously mentioned, the EPA continues to rely on the major scientific assessments from the NRC, the United States Global Change Research Program, and IPCC. These organizations bring together large numbers of climate science experts to synthesize the available data, modeling, and research on climate change, and subject the reports to rigorous levels of peer review. In addition, several government agencies such as the National Oceanic and Atmospheric Administration and the National Aeronautics and Space Administration perform key climate monitoring

---

<sup>5</sup> National Research Council, 2010, *America's Climate Choices: Advancing the Science of Climate Change*. The National Academies Press, Washington, DC, USA.

functions, and the Department of Energy has a dedicated program for climate model intercomparison and evaluation. The EPA and all users of this information benefit from a robust federal and academic research enterprise focused on the credibility and integrity of climate data.

AL-15-000-7501

## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
LEGISLATION DIVISION

April 6, 2015

Jim Jones  
Assistant Administrator  
Office of Chemical Safety and Pollution Prevention  
Environment Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460

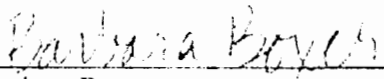
Dear Mr. Jones:

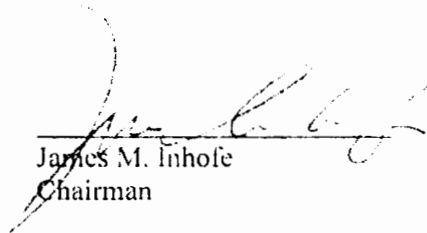
On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Wednesday, March 18, 2015 to examine the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697). The committee greatly appreciates your attendance and participation in this hearing.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. We ask that you respond to each member's request in a separate typed document. To comply with Committee rules, please e-mail a copy of your responses to [Elizabeth.Olsen@epw.senate.gov](mailto:Elizabeth.Olsen@epw.senate.gov) or deliver one hard copy by April 15, 2015. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Dimitri Karakitsos, Senior Counsel on the Committee's Majority staff at (202) 224-6176, or Jason Albritton, Minority Senior Policy Advisor at (202) 224-1914.

Sincerely,

  
Barbara Boxer  
Ranking Member

  
James M. Inhofe  
Chairman

**RE: QFRs from examining the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697).**

**DT: April 6, 2015**

**Senator Inhofe Questions**

**Questions for Jim Jones**

1. During the March 18 hearing, you stated that EPA would interpret the "likely to meet" standard for low priority chemicals as requiring the Agency be very confident of that determination. Please provide additional information on how the Agency would expect to be confident of that determination. In particular, please contrast current law with the approach required under S. 697.
2. Several times during the hearing on March 18, you stated that EPA had "no duty" to regulate chemicals under TSCA today. Yet under Section 5, EPA clearly has a duty to review and possibly regulate new chemicals, and under Section 6 EPA clearly has a duty to regulate chemicals that pose an unreasonable risk to health or the environment. Please clarify your statement that "EPA has no duty to regulate chemicals under TSCA today" ?
3. In response to a question posed at the March 18 hearing, you stated there was "ambiguity" with respect to the preemption of State clean air and clean water regulations.
  - a. Does TSCA today preempt state actions under the Clean Air Act or any other federal law?
  - b. Is TSCA today "ambiguous" on the preemptive effect of a TSCA action on state clean air and water regulations?
  - c. Under TSCA today, if a state regulates a chemical substance under a state clean water standard that EPA finds does not pose an unreasonable risk, and that EPA therefore finds does not warrant regulation under Sections 5 or 6, would EPA's decision preempt the state action?
4. You testified in November 2014 that EPA should have clear authority to assess chemicals against a risk-based standard and to take action on chemicals that do not meet the standard.
  - a. Does S. 697 mandate that EPA base its chemical safety decisions solely on considerations of risk to public health and the environment?
  - b. Is S. 697 clear that costs and benefits may not factor into a chemical safety evaluation?
  - c. Does S. 697 require that all chemicals in commerce, including those "grandfathered" under existing TSCA, be reviewed?
5. You testified in November 2014 that EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on risk and exposure considerations.
  - a. Does S. 697 require EPA to establish a risk-based prioritization screening process within a year of enactment?
  - b. How does EPA's process under the Work Plan Chemical program compare to the requirements of S. 697 for the prioritization, assessment and possible regulation of priority substances?

**RE: QFRs from examining the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697).**

**DT: April 6, 2015**

### **Senator Vitter Questions**

#### **Questions for Jim Jones**

1. Can you please explain the impact on an existing state law once a chemical is designated a high priority? The intention is that any and all existing state laws and regulations remain in place after a chemical is designated as a high priority, is that your clear interpretation of the language in the bill?
2. EPA adopted Compliance Monitoring Guidance for TSCA in 2011. Does that guidance anticipate a role for state governments in implementing or enforcing EPA's new and existing chemicals program?
3. Under TSCA's existing preemption provision States can adopt requirements that are "identical" to EPA's decisions without running afoul of TSCA's preemption provision. If a State adopts a requirement identical to TSCA, the State would have a responsibility to enforce its own law, not federal law, correct? In fact, there is no "co-enforcement" of federal law by the States under TSCA today, or under S. 697, correct?
4. In your response to a question posed at the March 18, 2015 hearing on co-enforcement, you said you were not aware that co-enforcement by States that has created any problems. Your response appeared to indicate a view that State co-enforcement required the States to adopt the exact same standard or regulation as EPA.
  - a. EPA has issued hundreds of Significant New Use Rules over the years. Under TSCA today, those actions preempt state action. How many state actions to restrict or prohibit chemicals has EPA determined are preempted by SNURs?
  - b. How many state actions regarding testing requirements has EPA determined are preempted by test rules or consent agreements under Section 4?
  - c. Does EPA regularly assess state restrictions or prohibitions on chemical substances to determine if they adopt the "exact" standard or regulation as EPA?
  - d. What criteria does EPA apply to determine if a state action on a chemical substance is identical to the EPA action?
  - e. Does EPA believe that state enforcement and penalty provisions associated with a state action on a chemical substance must also be identical to federal law or regulation?
  - f. Is it possible that State law might be enforced differently from Federal law, and that significant state-to-state differences in enforcement could result in an inconsistent patchwork of state regulation?

**RE: QFRs from examining the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697).**  
**DT: April 6, 2015**

**Questions from Senator Markey**

Questions for Jim Jones

1. New York's Attorney General recently sent a letter describing the ways State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. Do you agree that all of the erosions of State authority described in this letter are enabled by the bill text?
2. Vermont's Attorney General recently sent a letter describing the ways State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. Do you agree that all of the erosions of State authority described in this letter are enabled by the bill text?
3. The Attorneys General of New York, Iowa, Maine, Maryland, Oregon and Washington recently sent a letter describing the ways State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. Do you agree that all of the erosions of State authority described in this letter are enabled by the bill text?
4. The Udall-Vitter bill includes language that allows EPA to grant States permission to set stronger chemical safety standards if EPA determines that there is a State or local need to protect health or the environment from that chemical. Do you agree that it would be extremely difficult for EPA to make that determination, since the chemical would pose the same danger in one State as it would in another State?
5. The Udall-Vitter bill includes provisions that require EPA to give preference to industry requests to pay for EPA designation of a chemical as "high priority" when regulations on that chemical have been imposed by one or more States. Do you agree that this language could be used to facilitate or accelerate the preemption of planned State chemical safety standards?
6. The Udall-Vitter bill contains a requirement that States notify EPA whenever they take action to regulate a chemical that EPA has not yet designated as a "high priority". EPA then has to determine whether it should deem that chemical as "high priority" if the State's regulation would have significant economic impacts or if two or more States have already regulated it. Do you agree that this language could make it more likely that EPA would act to preempt State regulation of a chemical by classifying it as "high priority"?



**RE: QFRs from examining the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697).**

**DT: April 6, 2015**

7. In 1989, EPA tried to ban asbestos under its TSCA authority, but industry successfully overturned the ban in court. The term in the Udall-Vitter bill that is used to define what is meant by "safe" contains the "unreasonable risk" language that was in part the subject of that litigation. Do you believe that the use of this same language that has already been the subject of litigation would increase the likelihood that EPA would be sued using some of the same arguments industry used to overturn the asbestos ban?
8. In 2014, a chemical safety case decided in the DC Circuit of the US Court of Appeals reiterated an earlier finding that "This court has acknowledged the difficulties of applying the **substantial evidence** test "to regulations which are essentially legislative and rooted in inferences from complex scientific and factual data, and which often necessarily involve highly speculative projections of technological development in areas wholly lacking in scientific and economic certainty." The Udall-Vitter bill includes this same "substantial evidence" standard, even though it can be a much harder standard to meet than the one used in other environmental laws. This standard was also part of industry's successful arguments to overturn EPA's asbestos ban. Do you agree that the so-called "substantial evidence" standard is not yet settled law, and that its use in this bill would increase the likelihood that EPA would be sued using some of the same arguments industry used to overturn the asbestos ban?
9. In 1989, EPA tried to ban asbestos under its TSCA authority, but industry successfully overturned the ban in court. Asbestos is already banned in 54 countries, and exposure to it kills 10,000 Americans each year. Would the Udall-Vitter bill allow EPA to immediately propose a ban or restriction on asbestos, or would it have to complete a safety assessment first?
10. Persistent, bio-accumulative and toxic chemicals like mercury and PCBs are known to persist in the environment and accumulate in the body, and can include dangerous chemicals that pass from pregnant women to developing fetuses. Would the Udall-Vitter bill allow EPA to immediately propose a ban or restriction on these known dangers?
11. Flame retardant chemicals are used in everything from couches to clothes. If EPA finds that flame-retardant chemicals are unsafe, is it true that under the Udall-Vitter bill, EPA would have to do a separate analysis for EACH type of consumer product that includes them? It is true that under the bill, EPA might even have to study each type of chair or couch and each type of garment as a condition for regulating each one?
12. Do you agree that if EPA wishes to ban or restrict the use of a chemical in, for example, plastic, that EPA should be able to analyze exposure from that chemical in ALL plastic

**RE: QFRs from examining the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697).**

**DT: April 6, 2015**

products that contain that chemical, instead of having to separately analyze each product that uses that type of plastic?

13. Recently, news reports indicated that floorboards that were imported from China contained high levels of formaldehyde, a known carcinogen. Do you agree that the Udall-Vitter bill makes it harder for EPA to intercept products containing dangerous chemicals that are being imported from countries like China?
14. When EPA designates a chemical as "low priority" that essentially means that EPA thinks it is safe. Do you agree that the Udall-Vitter bill contains no way for a member of the public to challenge the scientific validity of that determination in court?
15. When EPA designates a chemical as "low priority," that essentially means that EPA thinks it is safe. The Udall-Vitter bill includes a limited way for some States to challenge the scientific validity of that determination in court even though it would not be possible for an individual or other organization to do so. If a State did successfully make such a challenge and cause EPA to re-classify the chemical as "high priority" instead, wouldn't that also result in the preemption of the State from doing anything to protect against that chemical itself?

**Environment and Public Works Committee Hearing**

**March 18, 2015**

**Follow-Up Questions for Written Submission**

Senator Barbara Boxer

Questions for Jim Jones, Assistant Administrator, EPA

1. Assistant Administrator Jones, in 1989, EPA tried to ban asbestos under its TSCA authority, but industry successfully overturned the ban in court. The term in the Vitter-Udall bill that is used to define what is meant by "safe" contains the same core language that was the subject of that litigation. Do you believe that the use of this same "unreasonable risk" language that has already been the subject of litigation would increase the likelihood that EPA would be sued using some of the same arguments industry used to overturn the asbestos ban?
2. Mr. Jones, flame retardant chemicals are used in everything from couches to clothes. If EPA finds that flame-retardant chemicals are unsafe, is it true that under the Vitter-Udall bill, EPA would have to do a separate analysis for EACH type of consumer product that includes them? Isn't it true that under the bill, EPA might even have to study each type of chair or couch and each type of garment as a condition for regulating each one?
3. Mr. Jones, recent news reports indicated that floorboards that were imported from China contained high levels of formaldehyde, a known carcinogen. Do you agree that the Vitter-Udall bill makes it harder for EPA to intercept products containing dangerous chemicals that are being imported from countries like China?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN - 8 2015

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable James M. Inhofe  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Thank you for the opportunity to respond to the questions for the record following the March 18, 2015, hearing on the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act (S.697). Enclosed are the Environmental Protection Agency's responses to the questions.

If you have any further questions, please contact me or your staff may contact Sven-Erik Kaiser at [kaiser.sven-erik@epa.gov](mailto:kaiser.sven-erik@epa.gov) or 202-566-2753.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Vaught", is written over a horizontal line.

Laura Vaught  
Associate Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN - 8 2015

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable Barbara Boxer  
Ranking Member  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Senator Boxer:

Thank you for the opportunity to respond to the questions for the record following the March 18, 2015, hearing on the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act (S.697). Enclosed are the Environmental Protection Agency's responses to the questions.

If you have any further questions, please contact me or your staff may contact Sven-Erik Kaiser at [kaiser.sven-erik@epa.gov](mailto:kaiser.sven-erik@epa.gov) or 202-566-2753.

Sincerely,

A handwritten signature in black ink, which appears to read "Laura Vaught", is written over a light blue circular background.

Laura Vaught  
Associate Administrator

Enclosure

Senate Committee on Environment and Public Works  
Hearing on "Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act (S.697)  
March 18, 2015  
Questions for the Record

The responses are based on the March 10, 2015, version of S.697 that was the subject of the hearing. Any changes made in subsequent versions of S.697 are not reflected in the responses.

Senator Inhofe

Inhofe 1. During the March 18 hearing, you stated that EPA would interpret the "likely to meet" standard for low priority chemicals as requiring the Agency be very confident of that determination. Please provide additional information on how the Agency would expect to be confident of that determination. In particular, please contrast current law with the approach required under S.697.

Response: In identifying low-priority substances under the March 10, 2015, version of S.697, the EPA would be required to conclude information is sufficient to establish that the chemical substance is likely to meet the safety standard, as opposed to conducting a full-blown risk assessment and making a determination that the chemical substance does meet the safety standard. Given this, the EPA would want to make the finding based on clear indications of low risk which could be readily determined by reviewing the available data on hazard and exposure, without conducting extensive quantitative assessment; for example, if it were clear that hazard and/or exposure were very low. There is no prioritization process for identifying low priority chemicals under TSCA that is analogous to that in S.697.

Inhofe 2. Several times during the hearing on March 18, you stated that EPA had "no duty" to regulate chemicals under TSCA today. Yet under Section 5, EPA clearly has a duty to review and possibly regulate new chemicals, and under Section 6 EPA clearly has a duty to regulate chemicals that pose an unreasonable risk to health or the environment. Please clarify your statement that "EPA has no duty to regulate chemicals under TSCA today"?

Response: The EPA's testimony was regarding existing chemicals. TSCA section 6(a) states:

"If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents, or will present an unreasonable risk of injury to health or the environment, the Administrator shall by rule apply one or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements."

So under the circumstance where the EPA makes a finding regarding an existing chemical, it would then have a duty to mitigate those risks by rule. However, there is no mandate under

current law for the EPA to establish a program to prioritize and assess existing chemicals. Without such a mandate, the EPA has found it difficult to maintain action over a sustained period of time.

Inhofe 3. In response to a question posed at the March 18 hearing, you stated there was "ambiguity" with respect to the preemption of State clean air and clean water regulations.

3a. Does TSCA today preempt state actions under the Clean Air Act or any other federal law?

Response: TSCA does not preempt state action adopted under the authority of federal law, including the Clean Air Act.

3b. Is TSCA today "ambiguous" on the preemptive effect of a TSCA action on state clean air and water regulations?

Response: There is some ambiguity about what state requirements would be covered under the heading of requirements "adopted under the authority of federal law." This is because certain state environmental programs acknowledged under federal law, and apparently intended to be protected from exemption when TSCA was drafted, (e.g., state implementation plans subject to approval under the Clean Air Act) are not literally "adopted under the authority of" federal law. See H.R. Rep. No. 1341, 94th Cong., 2nd Sess. 54 (1976).

3c. Under TSCA today, if a state regulates a chemical substance under a state clean water standard that EPA finds does not pose an unreasonable risk, and that EPA therefore finds does not warrant regulation under Sections 5 or 6, would EPA's decision preempt the state action?

Response: No.

Inhofe 4. You testified in November 2014, that EPA should have clear authority to assess chemicals against a risk-based standard and to take action on chemicals that do not meet the standard.

4a. Does S.697 mandate that EPA base its chemical safety decisions solely on considerations of risk to public health and the environment?

Response: The safety standard, which is the standard used in making a safety determination, as defined in the March 10, 2015, version of S.697, specifically excludes taking into consideration cost and other non-risk factors.

4b. Is S.697 clear that costs and benefits may not factor into a chemical safety evaluation?

Response: The March 10, 2015, version of S.697 is clear that cost and other non-risk factors cannot factor into a chemical safety evaluation.

4c. Does S.697 require that all chemicals in commerce, including those “grandfathered” under existing TSCA, be reviewed?

Response: The prioritization throughput requirements in the March 10, 2015, version of the bill would ultimately result in all chemicals actively in commerce being reviewed.

Inhofe 5. You testified in November 2014 that EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on risk and exposure considerations.

5a. Does S.697 require EPA to establish a risk-based prioritization screening process within a year of enactment?

Response: Yes, section 4A(a)(1) of the March 10, 2015, version of the bill requires that, “not later than 1 year after enactment of this section, the Administrator shall establish, by rule, a risk-based screening process” for prioritizing.

5b. How does EPA's process under the Work Plan Chemical program compare to the requirements of S. 697 for the prioritization, assessment and possible regulation of priority substances?

Response: The March 10, 2015, version of S.697 would require the EPA to develop policies and procedures for carrying out the various requirements in the bill, so the precise details of these processes are not fully specified. That said, the hazard and exposure criteria specified in the bill for the prioritization screening process are similar to what was done to create the EPA's current Work Plan.

#### Senator Vitter

Vitter 1. Can you please explain the impact on an existing state law once a chemical is designated a high priority? The intention is that any and all existing state laws and regulations remain in place after a chemical is designated as a high priority, is that your clear interpretation of the language in the bill?

Response: Yes, it is the EPA's interpretation that regarding the March 10, 2015, version of the bill, the designation of a chemical substance as high priority does not affect the status of existing state laws and regulations.

Vitter 2. EPA adopted Compliance Monitoring Guidance for TSCA in 2011. Does that guidance anticipate a role for state governments in implementing or enforcing EPA's new and existing chemicals program?

Response: The TSCA new and existing chemicals programs are exclusively federal programs.

Vitter 3. Under TSCA's existing preemption provision States can adopt requirements that are “identical” to EPA's decisions without running afoul of TSCA's preemption provision. If a State



adopts a requirement identical to TSCA, the State would have a responsibility to enforce its own law, not federal law, correct? In fact, there is no "co-enforcement" of federal law by the States under TSCA today, or under S. 697, correct?

Response: "Co-enforcement" is not a term that the EPA typically uses. It is correct that, under both TSCA and the March 10, 2015, version of S.697, states do not enforce federal law.

Vitter 4. In your response to a question posed at the March 18, 2015 hearing on co-enforcement, you said you were not aware that co-enforcement by States that has created any problems. Your response appeared to indicate a view that State co-enforcement required the States to adopt the exact same standard or regulation as EPA.

4a. EPA has issued hundreds of Significant New Use Rules over the years. Under TSCA today, those actions preempt state action. How many state actions to restrict or prohibit chemicals has EPA determined are preempted by SNURs?

Response: As the EPA interprets TSCA section 18, significant new use rules do not preempt state law.

4b. How many state actions regarding testing requirements has EPA determined are preempted by test rules or consent agreements under Section 4?

Response: TSCA does not call for the EPA to determine whether state laws are preempted; rather, that determination would typically be made by a court. The EPA is not aware of a case where the agency has been asked about a state testing requirement.

4c. Does EPA regularly assess state restrictions or prohibitions on chemical substances to determine if they adopt the "exact" standard or regulation as EPA?

Response: No.

4d. What criteria does EPA apply to determine if a state action on a chemical substance is identical to the EPA action?

Response: As stated above, TSCA does not call for the EPA to make determinations on whether state laws are preempted. To the best of our knowledge, the EPA has not received any requests to determine whether state actions are identical to the EPA action.

4e. Does EPA believe that state enforcement and penalty provisions associated with a state action on a chemical substance must also be identical to federal law or regulation?

Response: As stated above, TSCA does not call for the EPA to make determinations on these kinds of issues.

4f. Is it possible that State law might be enforced differently from Federal law, and that significant state-to-state differences in enforcement could result in an inconsistent patchwork of state regulation?

Response: It is possible that a state may take a different approach to enforcement of a state requirement than the EPA does to an identical federal requirement.

Senator Markey

Markey 1. New York's Attorney General recently sent a letter describing the ways State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. Do you agree that all of the erosions of State authority described in this letter are enabled by the bill text?

Response: In large measure, the letter matches the EPA's analysis of how the March 10, 2015, version of S.697 would preempt state law. However, the EPA does not necessarily agree with all of the analysis in the letter. For example, the EPA believes the bill could be read to provide that preemption under section 18(b) would end as soon as the EPA makes a determination that a chemical substance does not meet the safety standard. The EPA notes that 18(b) preemption only applies to a "chemical substance that is a high-priority substance designated under section 4A." (page 141, lines 24-25), and the bill commands the EPA to "remove the chemical substance from the list of high-priority substances" as soon as a safety determination is complete (section 4A(a)(3)(A)(iii)(I); page 35 line 25 to page 36 lines 1-3).

Markey 2. Vermont's Attorney General recently sent a letter describing the ways State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. Do you agree that all of the erosions of State authority described in this letter are enabled by the bill text?

Response: In large measure, the letter matches the EPA's analysis of how the March 10, 2015, version of S.697 would preempt state law. However, the EPA does not necessarily agree with all of the analysis in the letter. For example, the EPA believes the bill could be read to provide that preemption under section 18(b) would end as soon as the EPA makes a negative safety determination. The EPA notes that 18(b) preemption only applies to a "chemical substance that is a high-priority substance designated under section 4A." (page 141, lines 24-25), and the bill commands the EPA to "remove the chemical substance from the list of high-priority substances" as soon as a safety determination is complete (section 4A(a)(3)(A)(iii)(I); page 35 line 25 to page 36 lines 1-3).

Markey 3. The Attorneys General of New York, Iowa, Maine, Maryland, Oregon and Washington recently sent a letter describing the ways State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. Do you agree that all of the erosions of State authority described in this letter are enabled by the bill text?

Response: In large measure, the letter matches the EPA's analysis of how the March 10, 2015, version of S.697 would preempt state law. However, the EPA does not necessarily agree with all of the analysis in the letter. For example, the EPA believes the bill could be read to provide that preemption under section 18(b) would end as soon as the EPA makes a negative safety determination. The EPA notes that 18(b) preemption only applies to a "chemical substance that is a high-priority substance designated under section 4A." (page 141, lines 24-25), and the bill commands the EPA to "remove the chemical substance from the list of high-priority substances" as soon as a safety determination is complete (section 4A(a)(3)(A)(iii)(I); page 35 line 25 to page 36 lines 1-3).

Markey 4. The Udall-Vitter bill includes language that allows EPA to grant States permission to set stronger chemical safety standards if EPA determines that there is a State or local need to protect health or the environment from that chemical. Do you agree that it would be extremely difficult for EPA to make that determination, since the chemical would pose the same danger in one State as it would in another State?

Response: The March 10, 2015, version of the bill creates two types of preemption and two corresponding types of waivers. For the EPA to waive preemption caused by an EPA determination that a chemical meets the safety standard or EPA regulation of a chemical, the EPA must find that the state requirement is warranted by compelling state or local conditions. For the EPA to waive preemption caused by commencement of an EPA safety assessment, the EPA must find that the state requirement is warranted by a compelling local interest. These provisions – especially the first one, which requires a showing of state or local conditions rather than just a local interest – could be interpreted as requiring a showing of a risk concern that is specific to the state.

Markey 5. The Udall-Vitter bill includes provisions that require EPA to give preference to industry requests to pay for EPA designation of a chemical as "high priority" when regulations on that chemical have been imposed by one or more States. Do you agree that this language could be used to facilitate or accelerate the preemption of planned State chemical safety standards?

Response: The March 10, 2015, version of the bill allows the EPA to identify "additional priorities" for safety assessment and determination pursuant to the request of a manufacturer and processor, subject to payment of fees. These chemicals would not be "high priority" substances under the bill, and the "additional priority" designation would not itself trigger preemption (section 4A(c)(5)).

Markey 6. The Udall-Vitter bill contains a requirement that States notify EPA whenever they take action to regulate a chemical that EPA has not yet designated as a "high priority". EPA then has to determine whether it should deem that chemical as "high priority" if the State's regulation would have significant economic impacts or if two or more States have already regulated it. Do you agree that this language could make it more likely that EPA would act to preempt State regulation of a chemical by classifying it as "high priority"?

Response: Under the March 10, 2015 version of the bill, the criteria for designating a chemical substance as high or low priority are the same whether the EPA evaluates the substance on its own initiative or pursuant to the bill's state notification process. In addition, the bill does not impose a time limit for the EPA to complete prioritization reviews for the chemicals subject to this process (or for any other chemicals under prioritization review). Thus, it is unclear whether that process would make it more likely that the EPA would act to preempt state regulation.

Markey 7. In 1989, EPA tried to ban asbestos under its TSCA authority, but industry successfully overturned the ban in court. The term in the Udall-Vitter bill that is used to define what is meant by "safe" contains the "unreasonable risk" language that was in part the subject of that litigation. Do you believe that the use of this same language that has already been the subject of litigation would increase the likelihood that EPA would be sued using some of the same arguments industry used to overturn the asbestos ban?

Response: The safety standard as defined in the March 10, 2015, version of the bill includes language that alters the meaning of "unreasonable risk" from current TSCA. That being said, it is still possible that the EPA might be sued using similar arguments as in prior cases.

Markey 8. In 2014, a chemical safety case decided in the DC Circuit of the US Court of Appeals reiterated an earlier finding that "This court has acknowledged the difficulties of applying the substantial evidence test "to regulations which are essentially legislative and rooted in inferences from complex scientific and factual data, and which often necessarily involve highly speculative projections of technological development in areas wholly lacking in scientific and economic certainty." The Udall-Vitter bill includes this same "substantial evidence" standard, even though it can be a much harder standard to meet than the one used in other environmental laws. This standard was also part of industry's successful arguments to overturn EPA's asbestos ban. Do you agree that the so-called "substantial evidence" standard is not yet settled law, and that its use in this bill would increase the likelihood that EPA would be sued using some of the same arguments industry used to overturn the asbestos ban?

Response: The EPA may be sued using some of the same arguments used in the asbestos case, in view of the retention of the "substantial evidence" standard. We note, though, that the D.C. Circuit, in the case the question refers to, remarked on "an 'emerging consensus' of the Courts of Appeals, that the difference between the two standards [substantial evidence standard and arbitrary and capricious standard] should not be 'exaggerate[d].'" We also note that whatever benefit might accrue to litigants under the standard would accrue both to industry and environmental litigants challenging the EPA action.

Markey 9. In 1989, EPA tried to ban asbestos under its TSCA authority, but industry successfully overturned the ban in court. Asbestos is already banned in 54 countries, and exposure to it kills 10,000 Americans each year. Would the Udall-Vitter bill allow EPA to immediately propose a ban or restriction on asbestos, or would it have to complete a safety assessment first?

Response: Under the March 10, 2015, version of the bill, the EPA would have the discretion to prioritize asbestos immediately. The safety assessment and determination processes described in the bill would need to be followed before any potential risk management could be promulgated.

Markey 10. Persistent, bio-accumulative and toxic chemicals like mercury and PCBs are known to persist in the environment and accumulate in the body, and can include dangerous chemicals that pass from pregnant women to developing fetuses. Would the Udall-Vitter bill allow EPA to immediately propose a ban or restriction on these known dangers?

Response: PCBs are already banned by TSCA section 6(e). With respect to other PBT chemicals, under the March 10, 2015, version of the bill, the EPA would have the discretion to prioritize these types of chemicals immediately, but would not be required to. The safety assessment and determination processes described in the bill would need to be followed before any potential risk management could be promulgated.

Markey 11. Flame retardant chemicals are used in everything from couches to clothes. If EPA finds that flame-retardant chemicals are unsafe, is it true that under the Udall-Vitter bill, EPA would have to do a separate analysis for EACH type of consumer product that includes them? It is true that under the bill, EPA might even have to study each type of chair or couch and each type of garment as a condition for regulating each one?

Response: It is true that the March 10, 2015, version of the bill requires the EPA, if it intends to regulate an article, to have evidence of significant exposure 'from such article', and it is possible that the language in the bill could include multiple analyses along the lines described in the question.

Markey 12. Do you agree that if EPA wishes to ban or restrict the use of a chemical in, for example, plastic, that EPA should be able to analyze exposure from that chemical in ALL plastic products that contain that chemical, instead of having to separately analyze each product that uses that type of plastic?

Response: The EPA agrees that a requirement to separately analyze each product to be regulated could impose significant burden.

Markey 13. Recently, news reports indicated that floorboards that were imported from China contained high levels of formaldehyde, a known carcinogen. Do you agree that the Udall-Vitter bill makes it harder for EPA to intercept products containing dangerous chemicals that are being imported from countries like China?

Response: Yes, the March 10, 2015, version of the bill establishes limitations on EPA's ability to impose requirements on articles and to require import certification for chemical substances in imported articles.

Markey 14. When EPA designates a chemical as "low priority" that essentially means that EPA thinks it is safe. Do you agree that the Udall-Vitter bill contains no way for a member of the public to challenge the scientific validity of that determination in court?

Response: The only provision in the March 10, 2015, version of the bill that expressly provides for challenging prioritization designations allows for judicial review by a state that had recommended a low-priority designation for a chemical substance. This provision could well imply that Congress did not intend for judicial review of prioritization decisions to be otherwise available.

Markey 15. When EPA designates a chemical as "low priority," that essentially means that EPA thinks it is safe. The Udall-Vitter bill includes a limited way for some States to challenge the scientific validity of that determination in court even though it would not be possible for an individual or other organization to do so. If a State did successfully make such a challenge and cause EPA to re-classify the chemical as "high priority" instead, wouldn't that also result in the preemption of the State from doing anything to protect against that chemical itself?

Response: Regarding the March 10, 2015, version of the bill, it is unclear to the EPA exactly how this judicial review provision is intended to operate. Under one plausible interpretation, the scenario described above would be precluded. The judicial review provision appears to only apply to a state that has submitted "a recommendation . . . to designate a chemical substance as a low priority." If so, then this provision would only allow such states to challenge high priority designations (a state would have nothing to challenge if it requested a low priority designation and the EPA followed the state's recommendation).

#### Senator Boxer

Boxer 1. Assistant Administrator Jones, in 1989, EPA tried to ban asbestos under its TSCA authority, but industry successfully overturned the ban in court. The term in the Vitter-Udall bill that is used to define what is meant by "safe" contains the same core language that was the subject of that litigation. Do you believe that the use of this same "unreasonable risk" language that has already been the subject of litigation would increase the likelihood that EPA would be sued using some of the same arguments industry used to overturn the asbestos ban?

Response: The safety standard as defined in the March 10, 2015, version of S.697 includes language that alters the meaning of "unreasonable risk" from current TSCA. That being said, litigants may make similar arguments to those used in prior cases.

Boxer 2. Mr. Jones, flame retardant chemicals are used in everything from couches to clothes. If EPA finds that flame-retardant chemicals are unsafe, is it true that under the Vitter-Udall bill, EPA would have to do a separate analysis for EACH type of consumer product that includes them? Isn't it true that under the bill, EPA might even have to study each type of chair or couch and each type of garment as a condition for regulating each one?

Response: It is true that the March 10, 2015, version of the bill requires the EPA, if it intends to regulate an article, to have evidence of significant exposure "from such article", and it is possible that the language in the bill could include multiple analyses along the lines described in the question.

Boxer 3. Mr. Jones, recent news reports indicated that floorboards that were imported from China contained high levels of formaldehyde, a known carcinogen. Do you agree that the Vitter-Udall bill makes it harder for EPA to intercept products containing dangerous chemicals that are being imported from countries like China?

Response: Yes, the March 10, 2015, version of the bill establishes limitations on EPA's ability to impose requirements on articles and to require import certification for chemical substances in imported articles.

AL-15-000-8042



**Committee on Transportation and Infrastructure**  
**U.S. House of Representatives**

**Bill Shuster**  
Chairman

Washington, DC 20515

**Peter A. DeFazio**  
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

April 15, 2015

**Mr. Mathy Stanislaus**  
Assistant Administrator  
Office of Solid Waste and Emergency Response  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code: 5101T  
Washington, D.C. 20460

Dear Mr. Stanislaus:

The House Subcommittee on Water Resources and Environment held a hearing entitled "The President's Fiscal Year 2016 Budget: Administration Priorities for the U.S. Environmental Protection Agency" on March 18, 2015. We indicated in the hearing that we would submit questions for the record.

Attached are questions for the record from members of the House Subcommittee on Water Resources and Environment. Please provide written responses within 30 days of the date of this letter. If you or your staff have any questions or need further information, please contact Geoff Bowman at [geoff.bowman@mail.house.gov](mailto:geoff.bowman@mail.house.gov) of the House Committee on Transportation and Infrastructure at (202) 225-4360.

Sincerely,

Bob Gibbs  
Chairman  
Transportation and Infrastructure Committee



## **QUESTIONS FOR THE RECORD**

### **HOUSE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT HEARING ON**

#### **“The President’s Fiscal Year 2016 Budget: Administration Priorities for the U.S. Environmental Protection Agency”**

**March 18, 2015**

#### **QUESTIONS for The Honorable Mathy Stanislaus**

**(Assistant Administrator in EPA's Office of Solid Waste and Emergency Response)**

##### **A. Submitted on Behalf of Chairman Gibbs:**

**Q1 -** What is EPA headquarters doing to ensure that remedies selected to clean up sediment sites are nationally consistent and scientifically sound?

**Q2 -** Why are comments issued by the National Remedy Review Board (NRRB) to the Regions being disregarded (or ignored) by the EPA regional offices and not enforced by EPA headquarters?

A. Please describe how EPA Headquarters review NRRB and Contaminated Sediments Technical Advisory Group (CSTAG) recommendations?

B. What steps does EPA Headquarters take to ensure that Headquarters approves of the Regions’ responses to NRRB/CSTAG comments before they are issued?

**Q3 -** Some of the EPA regions are disregarding the major provisions of the EPA Sediment Guidance at mega (greater than \$50 million) sediment sites around the country, which are resulting in legitimate technical and policy disputes and significant delays in implementing the proposed remedies. What steps is EPA Headquarters taking to ensure that Regions are following the Sediment Guidance?

**Q4 -** At sediment megasites, remedies often raise significant issues of implementability (one of the nine CERCLA criteria) due to the impacts on bridges and other transportation infrastructure from major dredging projects in urban waterways.

A. How are Regions considering these impacts before issuing RODs?

B. How does EPA consider impacts on transportation infrastructure in the remedy phase?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN - 8 2015

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable Bob Gibbs  
Chairman  
Subcommittee on Water Resources and Environment  
Committee on Transportation and Infrastructure  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's Questions for the Record following the March 18, 2015, hearing entitled "The President's Fiscal Year 2016 Budget: Administration Priorities for the U.S. Environmental Protection Agency."

I hope this information is helpful to you and the members of the Subcommittee. If you have further questions, please contact me or your staff may contact Carolyn Levine in my office at [levine.carolyn@epa.gov](mailto:levine.carolyn@epa.gov) or (202) 564-1859.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Vaught".

Laura Vaught  
Associate Administrator

Enclosure

**U.S. Environmental Protection Agency  
Responses to Questions for the Record  
From the  
House Transportation and Infrastructure Committee  
March 18, 2015**

**Chairman Gibbs**

**Question 1: What is EPA headquarters doing to ensure that remedies selected to clean up sediment sites are nationally consistent and scientifically sound?**

**Answer:** EPA headquarters facilitates two national peer-input groups that provide expert advice on sediment sites. In 1995, the EPA formed the National Remedy Review Board (NRRB) to help control remedy costs and to promote both consistent and cost-effective decisions at Superfund sites, including federal facilities.<sup>1</sup> The NRRB consists of managers and senior technical or policy experts from each EPA region and experts in remedy selection and program implementation from EPA headquarters. After reviewing materials from a region on a forthcoming proposed remedy, the NRRB make advisory recommendations to the region. The NRRB reviews proposed cleanup actions at sites where the preferred remedy exceeds \$50 million<sup>2</sup>.

In 2002, the EPA issued Office of Solid Waste and Emergency Response Directive 9285.6-08<sup>3</sup>, "Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites," to help EPA site managers make scientifically sound and nationally consistent risk management decisions at contaminated sediment sites. This memorandum also created the Contaminated Sediments Technical Advisory Group (CSTAG). The CSTAG monitors the progress of and provides advice regarding large, complex, or controversial contaminated sediment Superfund sites. The CSTAG is composed of regional sediment site project managers and scientists and engineers from EPA headquarters, EPA's Office of Research and Development, and the U.S. Army Corps of Engineers.

The memorandum also established a headquarters consultation process to help ensure that regional site managers consider these principles *before* site-specific risk management decisions are made. The EPA has found that this process helps promote nationally consistent approaches to evaluate, select and implement protective, scientifically sound, and cost-effective remedies. The headquarters Office of Superfund Remediation and Technology Innovation has a regional coordinator and a sediment expert who review every sediment site consultation memo, Proposed Plan, and Record of Decision (ROD) for consistency with the EPA guidances and policies.

---

<sup>1</sup> <http://www.epa.gov/superfund/programs/nrrb/pdfs/11-28-95.pdf>

<sup>2</sup> <http://www.epa.gov/superfund/programs/nrrb/pdfs/NationalRemedyReviewBoardCriteriaRevisionandOperationalChanges.pdf>

<sup>3</sup> <http://www.epa.gov/superfund/policy/remedy/pdfs/92-85608-s.pdf>

**Question 2: Why are comments issued by the National Remedy Review Board (NRRB) to the regions being disregarded (or ignored) by the EPA regional offices and not enforced by EPA headquarters?**

**Answer:** At the majority of Superfund sites, the NRRB and CSTAG recommendations are helpful to the EPA regions as they develop cleanup plans. The NRRB and CSTAG are advisory in nature and provide peer review for regions. Regions may choose to implement recommendations based on their understanding of conditions at the site. The EPA headquarters role is to help support national consistency in program decision-making.

**Question 2(A): Please describe how EPA headquarters review NRRB and Contaminated Sediments Technical Advisory Group (CSTAG) recommendations?**

**Answer:** As noted above, EPA headquarters representatives sit on the NRRB and CSTAG, and participate in drafting their recommendations. The NRRB sends draft comments to an EPA region for review and considers their input when developing the final recommendations. If issues arise, they are resolved through an established elevation process with both headquarters and regional management. EPA headquarters serves in a consultation role and helps to support national consistency in program decision-making.

**Question 2(B): What steps does EPA headquarters take to ensure that headquarters approves of the Region's responses to NRRB/CSTAG comments before they are issued?**

**Answer:** The authority to select remedies is delegated to EPA regions through agency delegation 14-2. EPA headquarters does not review the region's response to the CSTAG recommendations. At most NRRB sites, however, the Chair of the NRRB (and Chair of the CSTAG for responses to joint NRRB/CSTAG recommendations) reviews the draft responses and submits comments back to the region for their consideration.

**Question 3: Some of EPA's regions are disregarding the major provisions of the EPA Sediment Guidance at mega (greater than \$50 million) sediment sites around the country, which are resulting in legitimate technical and policy disputes and significant delays in implementing the proposed remedies. What steps is EPA headquarters taking to ensure that regions are following the Sediment Guidance?**

**Answer:** When an EPA headquarters regional coordinator or sediment team member identifies a major recommendation that is not being followed, they work with the EPA regional site manager to resolve the issue. If it cannot be resolved at the staff level, the issue is elevated to headquarters and regional management. The EPA has developed documents and memoranda to help align agency program efforts when addressing contaminated sediment sites. The EPA headquarters sediments team also provides training to site managers through a number of forums, including the annual National Remedial Project Manager (NARPM) training conference. After completion of the 2005 Sediment Guidance, the Sediments Team provided 2-day class room trainings at several regional offices in 2007 and 2011.

**Question 4: At sediment megasites, remedies often raise significant issues of implementability (one of the nine CERCLA criteria) due to the impacts on bridges and other transportation infrastructure from major dredging projects in urban waterways.**

**(A): How are regions considering these impacts before issuing RODs?**

**Answer:** The EPA regions consider implementability issues regarding bridges and other transportation concerns when performing the comparative analysis of alternatives in the Superfund site feasibility study. At some sites, the EPA recognizes that implementability can be a significant issue as it relates to cost, time to completion, and community disruptions, and clearly considers it as a balancing criterion in selecting a remedy that is protective in the long-term, minimizes short-term impacts, and is cost-effective.

**(B): How does EPA consider impacts on transportation infrastructure in the remedy phase?**

**Answer:** During design and construction, the regions work closely with local communities and local transportation authorities to help ensure that the impacts of dredging and other construction activities minimize traffic disruptions for communities and the transportation sector.